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Supreme Court, U.S.
FILED

09-48 JUL 9 - 2009

No. OFFICE OF THE CLERK

In the

Supreme Court of the United States

FRANK J. LAWRENCE, JR.,
Petitioner,

v.

JANET K. WELCH, LOUIS A. SMITH, DAVID H. BAUM, RANDY A. MUSBACH, AND SONAL HOPE MITHANI,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ALLAN J. RITTENHOUSE
COUNSEL OF RECORD
220 EAST B STREET
P.O. BOX 647
IRON MOUNTAIN, MI 49801
PHONE: (906) 779-2080

QUESTIONS PRESENTED

The Michigan Board of Law Examiners issued a decision to deny Petitioner's application for a license to practice law on account of his criticism of Michigan officials. Rather than challenging that decision in state court, Petitioner proceeded directly to federal court, where both the District Court and the Sixth Circuit found the unreviewed decision of the Board to be barred by the *Rooker-Feldman* Doctrine[1].

The District Court and the Sixth Circuit also found that Petitioner's claim for prospective relief, to enjoin future unconstitutional denials, was not ripe and that absolute immunity barred his claim for damages against licensing investigators. The questions presented are:

1. Does the *Rooker-Feldman* Doctrine bar federal review of a decision rendered by the Michigan Board of Law Examiners, when the Board's decision was never reviewed by any state court?

2. Given Petitioner's stated intent to reapply for a license and his desire to continue engaging in criticism of state officials, is his claim for prospective relief ripe?

3. Are individuals who investigate and make recommendations on attorney licensing applications entitled to absolute immunity from suit?

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[1] See, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court Of Appeals v. Feldman*, 460 U.S. 462 (1983).

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Frank J. Lawrence, Jr., an individual citizen of the United States, residing in Bloomfield Hills, Michigan.

Respondents

Respondent Janet K. Welch is the Executive Director of the State Bar of Michigan. Respondent Louis A. Smith is the President of the Michigan Board of Law Examiners. Respondents David H. Baum, Randy A. Musbach and Sonal Hope Mithani are investigators for the State Bar of Michigan.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported at 531 F.3d 364 (6th Cir. 2008). Pet. App. 2a. The final Judgment of the United States District Court for the Western District of Michigan is unpublished and reproduced at Pet. App. 33a. The unpublished decision of the District Court is reproduced at Pet. App. 23a.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was issued on June 3, 2008. Pet. App. 2a. An Order denying Petitioner's timely petition for rehearing and rehearing *en banc* was issued on February 9, 2009. Pet. App. 1a. The jurisdiction of this Court is invoked under 28 USC §1254(1). On May 11, 2009, Justice Stevens extended the time for filing a petition for writ of certiorari to and including July 9, 2009. Pet. App. 34a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statutory provision:

42 U.S.C. §1983

This Statute provides:

§ 1983. Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Michigan regulates the practice of law, as with other professions and occupations, by requiring a license as a condition of practice. An applicant for a law license must meet certain eligibility requirements, which are divided generally between integrity fitness (evaluated by

review of "good moral character") and education fitness (evaluated by written examination of familiarity with standard legal concepts). The State Bar of Michigan first formulates a recommendation concerning an applicant's moral character, which is then transmitted to the Board of Law Examiners (hereinafter "Board"). The Board renders a final administrative decision on an applicant's application for a license to practice law.

In Michigan Compiled Law 600.922, the Michigan Legislature created the Board, the administrative agency that rendered the decision at issue in this litigation. Under Michigan law, a state agency such as the Board does not exercise "judicial power" and it is not part of the "judicial branch of our government". *Griev. Adm'r v. Fieger*, 476 Mich. 231, 253 (2006).

Pursuant to Michigan Court Rule 7.304(A), a complaint for writ of superintending control may be brought in the Michigan Supreme Court to challenge an adverse decision of the Board. There are no time limits on when the complaint may be brought, and therefore, the Board's adverse decision that is at issue in this litigation could now be challenged in state court if Petitioner desired to do so. There has never been a "state court judgment" regarding Petitioner's application for a license to practice law.

Petitioner's 2001 application for a license to practice law was addressed by the Sixth Circuit's decision in *Lawrence v. Chabot*, 182 Fed. Appx. 442 (6th Cir. 2006), wherein it was held that his as-applied claims were not ripe, but noted "...if and when Lawrence's claim is ripe (and in all ways suitable for judicial review), he may reassert this claim".

In 2004, Petitioner submitted his second application for a license to practice law. During Petitioner's reapplication process, he was questioned about his political viewpoints and he responded by voicing his belief that the federal courts are the "guardians of the constitution" and that the state courts fail to adequately protect federal rights. He denied ever stating that he had "little respect" for the state court system. In 2006, Petitioner was ultimately denied admission by the Board because of his public criticism of Respondents Baum, Mithani and Musbach, who were requested by the State Bar to investigate Petitioner's moral character and provide a recommendation on Petitioner's character and fitness.

During Petitioner's application process, he repeatedly advised the licensing officials that he reserved his federal claims and defenses for adjudication in a federal forum pursuant to *DLX, Inc. v. Kentucky*, 381 F.3d 511, 523 fn.9 (6th Cir. 2004) and *Barnes v. McDowell*, 848 F.2d 725, 732 (6th Cir. 1988).

When the Board denied Petitioner's second application for a license, he brought this lawsuit in the federal District Court under 42 U.S.C. §1983. Both the federal District Court and the Sixth Circuit Court of Appeals held that Petitioner's challenge to the Board's decision was barred by the *Rooker-Feldman* Doctrine. Additionally, the District Court and the Sixth Circuit found that Petitioner's claim for prospective relief, to enjoin future unconstitutional denials, was not ripe and that absolute immunity barred his claim for damages against the licensing investigators.

REASONS FOR GRANTING THE WRIT

Under *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005), application of the *Rooker-Feldman* doctrine is "confined" to litigants "complaining of injuries caused by state-court judgments". The Sixth Circuit erred where it applied the doctrine to Petitioner's case because: (1) the Board is a creature of the Michigan Legislature, specifically MCL 600.922 (an administrative agency, not a court); (2), the challenged Board decision is presently reviewable through a petition for writ superintending control in the Michigan Supreme Court; and (3), *Exxon Mobil* sanctions federal review of unreviewed state agency final orders ("an insurance policy"). The panel's decision turns the clock back to a day in which "the doctrine ha[d] sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases", *Exxon*, 544 U.S. at 284, by applying it to an unreviewed decision of a state agency.

The Concurring Opinion of the Sixth Circuit constituted the majority opinion on Petitioner's prospective relief claim. The decision that the prospective relief claim is not ripe conflicts with decisions of this Court, given Petitioner's stated intent to reapply for a license and his desire to continue engaging in criticism of state officials. In Petitioner's prior appeal to the Sixth Circuit, it was held that Petitioner's pre-denial challenge was not ripe. *Lawrence v. Chabot*, 182 Fed. Appx. 442 (6th Cir. 2006). Now, the Sixth Circuit has held that his post-denial challenge is not ripe. The Sixth Circuit erred disallowing Petitioner's prospective claim to proceed.

The Sixth Circuit's final conflict is with a line of Supreme Court cases stemming from *Butz v. Economou*,

438 U.S. 478, 513 (1978) which includes *Burns v. Reed*, 500 U.S. 478, 495 (1991). These cases hold that absolute immunity is limited to duties that are functionally comparable to that of a judge. The complaint, taken as true at this stage of the litigation, shows that Respondents Baum, Mithani and Musbach are agency officials engaged in investigative activities, and they are two administrative layers below any adjudicative decision-makers. The panel failed to perform a "*Butz*" functional analysis in immunizing these individuals.

The Court's review is warranted for all of these reasons.

I. The Ruling That The *Rooker-Feldman* Doctrine Barred Review Of The Board's Unreviewed Decision Conflicts With This Court's Decision In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005).

The *Rooker-Feldman* Doctrine "interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622 (1989). The doctrine applies to situations where a state court renders a final judgment; in such circumstances, Congress intends that the sole avenue into federal court should be a petition for certiorari invoking the explicit authority of this Court to review the judgments of "the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a).

On March 30, 2005, because "the doctrine ha[d] sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases," this Court clarified how the doctrine should be applied:

> The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobil, 544 U.S. at 284.

Because Petitioner has not presented his claims to any Michigan court, this case is unlike *Feldman*, and the *Rooker-Feldman* Doctrine cannot apply. Also, Petitioner was not required to seek state judicial review. This is supported by *Patsy v. Board of Regents*, 457 U.S. 496 (1982) because any state proceedings in this case were non-coercive in nature.

The panel's decision simply cannot be reconciled with *Exxon Mobil*, given that no state court ever reviewed the Board's decision.

II. The Ruling That Petitioner's Prospective Relief Claim Is Not Ripe Conflicts With The Decisions Of This Court.

The Sixth Circuit panelists could not all agree on how to resolve Petitioner's prospective relief claim. Two of the panelists, Judges Rogers and Sutton, stated that Petitioner's claim was not ripe. Therefore, the concurrence constituted the majority opinion on this issue.

However, Judge Bertlesman acknowledged the ripeness of Petitioner's claim:

> Lawrence has indicated a clear intent to reapply and, as the record reflects, has persisted in the same expressive activity that allegedly resulted in the first denial. Defendants, likewise, have clearly indicated that they consider such activity to render Lawrence of unfit character for admission.

Pet. App. 12a.

Because Petitioner has indicated "a clear intent to reapply" and continues to persist "in the same expressive activity that allegedly resulted in the first denial", this case is ripe. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967) (requiring courts "to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration").

Moreover, unlike the claims in cases such as *Texas v. United States*, 523 U.S. 296, 300 (1998), Lawrence's claim does not "rest[] upon contingent future events that may not occur as anticipated, or indeed may not occur at all." No further factual development would assist the federal courts in this matter. Final agency action has been taken and the issues to be resolved are legal in nature.

Withholding adjudication of this case creates immense hardship for Petitioner. He has been litigating these issues with the Respondents since 2003, all while his legal career has been on hold. In Petitioner's prior appeal to the Sixth Circuit, Judge Rogers wrote that Petitioner's pre-denial challenge was not ripe. *Lawrence v.*

Chabot, 182 Fed. Appx. 442 (6th Cir. 2006). Now, Judge Rogers, joined by Judge Sutton, have held that Petitioner's post-denial challenge is not ripe.

The Sixth Circuit's decision also conflicts with the Tenth Circuit's decision in *Roe #2 v. Ogden*, 253 F.3d 1225, 1231-1232 (10th Cir. 2001), where the court found that a challenge to attorney licensing rules alleged to violate the Americans With Disabilities Act was ripe for review. The Tenth Circuit noted:

> John Roe # 2 and other Students who may have answered the disputed questions in their bar applications will soon be subject to an investigation they believe will violate their rights under the ADA and Constitution. Those Students who have elected or will elect not to answer the questions risk denial of admission to the bar after expending considerable time and expense. This risk is more than hypothetical. * * * Therefore, were we to delay review until the Students pass the bar exam and challenge the questions before the Board and Colorado Supreme Court, we would in effect require the Students "to jump through a series of hoops, the last of which [they are] certain to find obstructed by a brick wall." Triple G Landfills, Inc. v. Bd. of Comm'rs of Fountain County, Indiana, 977 F.2d 287, 291 (7th Cir. 1992). All the while, the Students' legal careers will be placed on hold.

Id., 253 F.3d at 1231

Accordingly, decisions Petitioner must make "now or in the short future may be affected by whether we act." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 201 (1983). Deciding whether Respondents may constitutionally use Petitioner's public criticism as a basis for future character rejection would permit Petitioner to make an informed decision regarding his future expressive activity. This case is clearly ripe for review.

III. The Ruling That Absolute Immunity Is Afforded To Individuals Who Perform Investigative Functions In The Attorney Licensing Process Conflicts With The Decisions Of This Court.

The Sixth Circuit held that Respondents Baum, Musbach and Mithani, who act as investigators for the State Bar of Michigan "are entitled to absolute immunity for their actions in investigating [an applicant's] character and fitness to practice law and in making recommendations about the same." *Lawrence, supra*, 531 F.3d at 372. According to the Sixth Circuit, this is so because "determining a particular individual's qualifications and fitness for admission to practice law is an inherently judicial act." *Id.* at 373.

The Sixth Circuit's decision that absolute immunity is applicable to State Bar investigators who have no authority to issue decisions on applications, and who are two administrative layers removed from the members of the Board, conflicts with *Butz, supra*, which held that absolute immunity is limited to duties that are "functionally comparable to that of a judge." *See also, Burns*, 500 U.S. at 495. *In re Grand Jury*, 932 F.2d 481,

487 (6th Cir. 1991) (Michigan Bar administrative hearings before a panel of private attorneys are not judicial proceedings.) The panel failed to perform a "*Butz*" functional analysis.

During the entire time that Petitioner's application to practice law was in the hands of Respondents Baum, Mithani and Musbach, the application had never reached any adjudicative stage. The application was only in the investigative stage of the licensing process.

The Sixth Circuit's decision indicates that because Respondents Baum's, Mithani's and Musbach's duties relate to the ultimate decision whether or not an applicant is fit to be licensed, they should enjoy absolute immunity. However, an analogous argument was rejected by this Court in *Burns, supra*:

> Almost any action by a prosecutor, including his or her direct participation in purely investigative activity, could be said to be in some way related to the ultimate decision whether to prosecute, but we have never indicated that absolute immunity is that expansive.

Burns, 500 U.S. at 495.

Because the Sixth Circuit failed to perform a functional analysis of the duties employed by Respondents Baum, Musbach and Mithani, the decision was in error. Merely labeling a duty as a "judicial function" because it is related to the ultimate decision to license a Bar applicant is simply not enough to be afforded absolute immunity. This Court's review is warranted for these reasons.

CONCLUSION

The Petition for a Writ of Certiorari should be granted. Because no state court ever reviewed the decision of the Board, the Sixth Circuit's decision directly conflicts with this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005). Additionally, the Sixth Circuit's decision that Petitioner's prospective relief claim is not ripe conflicts with this Court's decision in *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967) and the Tenth Circuit's decision in *Roe #2 v. Ogden*, 253 F.3d 1225 (10th Cir. 2001). Finally, the Sixth Circuit's erred in awarding absolute immunity to Respondents Baum, Musbach and Mithani by failing to perform a functional analysis, as required in *Butz v. Economou*, 438 U.S. 478, 513 (1978) and *Burns v. Reed*, 500 U.S. 478, 495 (1991). They do not perform duties that are "functionally comparable to that of a judge".

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Allan J. Rittenhouse
COUNSEL OF RECORD
220 EAST B STREET
P.O. Box 647
IRON MOUNTAIN, MI 49801
PHONE: (906) 779-2080

July 9, 2009

APPENDIX A

07-1026
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK J. LAWRENCE, JR.,
Plaintiff-Appellant,

v.

JANET K. WELCH, ET AL.,
Defendants-Appellees.

Filed February 9, 2009
Leonard Green, Clerk

BEFORE: ROGERS and SUTTON, Circuit Judges; and BERTELSMAN, District Judge

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

APPENDIX B

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

07-1026
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Argued: November 29, 2007
Decided Filed: June 3, 2008

FRANK J. LAWRENCE, JR.,
Plaintiff-Appellant,

v.

JANET K. WELCH, ET AL.,
Defendants-Appellees.

BEFORE: ROGERS and SUTTON, Circuit Judges; and BERTELSMAN, District Judge

BERTELSMAN, District Judge. Plaintiff-Appellant Frank J. Lawrence, Jr. ("Lawrence") appeals from the district court's judgment dismissing his claims filed pursuant to 42 U.S.C. § 1983 against officials of the State Bar of Michigan in connection with their denial of his application for a license to practice law. For the following reasons, we AFFIRM.

I. BACKGROUND

Frank J. Lawrence, Jr. graduated from an accredited Michigan law school and passed the Michigan bar exam in 2001. He first applied for a license to practice law in Michigan the same year. For reasons not relevant here, that application was ultimately withdrawn.

Between 2001 and 2004, a contentious relationship developed between Lawrence, the State Bar of Michigan ("SBM"), and the Michigan Board of Law Examiners ("BLE"). In 2003, Lawrence filed a federal lawsuit against the BLE, the SBM, certain of its officials and employees, and justices of the Michigan Supreme Court. See Lawrence v. Chabot, 182 Fed. Appx. 442 (6th Cir. 2006). Lawrence sought declarations that certain rules of the state bar were unconstitutional, and he alleged, among other things, that the state bar had violated his First and Fourteenth Amendment rights in processing his 2001 application for admission prior to its withdrawal. The district court dismissed Lawrence's claims on various grounds, and this court affirmed. Id.

In 2003, Lawrence also began operating a registered website called "StateBarWatch" on which he actively criticized the SBM and BLE for alleged dishonesty within the Michigan attorney licensing system. Joint Appendix ("J.A.") at 17 (Compl. at ¶ 21).

On August 18, 2004, Lawrence reapplied for admission to the Michigan bar. On August 15, 2005, Lawrence was interviewed by three members of a SBM

District Character and Fitness Committee: David H. Baum ("Baum"), Randy A. Musbach ("Musbach"), and Sonal Hope Mithani ("Mithani"). During this interview, Lawrence stated that he had little respect for the Michigan state court system, and he expressed the view that the federal courts are the "guardians of the constitution" and that the Michigan state court system fails adequately to protect individuals' constitutional rights. J.A. at 19 (Compl. ¶ 24).

Following this interview, the District Committee forwarded to the SBM a Report and Recommendation stating: "The Committee does not believe that the applicant, Frank J. Lawrence, Jr., has shown by clear and convincing evidence that he currently possesses the requisite good character and fitness to be recommended to the practice of law in this state." J.A. 278. With respect to the above opinions expressed by Lawrence during his interview, the report stated: "We are concerned about providing a law license to someone who, even before he has handled his first case as a member of the bar, has effectively written off such a huge component of the justice system." J.A. 280.

Following the issuance of this Report and Recommendation, Lawrence made several communications to the employers of the members of the District Committee. He telephoned the University of Michigan Law School, where Baum was the Assistant Dean of Student Affairs. Lawrence told Baum's assistant that he wanted to address the student bar association to let them know how poorly he thought he had been treated.

Lawrence also sent a letter to a board member of the legal services organization for which Mithani was a director. In the letter, Lawrence stated how poorly he had been treated and how Mithani had manipulated Lawrence's stated views about the state court system.

The District Committee recommendation was sent directly to the BLE, which voted to accept the recommendation. Lawrence then requested a hearing.

A hearing was held before the BLE on April 20, 2006. Lawrence was questioned about his communications with Baum's and Mithani's employers, but he denied that they were inappropriate. J.A. 37-57. On June 14, 2006, the BLE issued a written opinion denying Lawrence's application for admission to practice law. Id. Lawrence did not seek review of this decision in the Michigan Supreme Court.

On September 6, 2006, Lawrence filed a complaint in the United States District Court for the Western District of Michigan pursuant to 42 U.S.C. § 1983, naming as defendants John T. Berry, executive director of the SBM, in his official capacity; Louis A. Smith, President of the BLE, in his official capacity; and Baum, Musbach, and Mithani, all in their individual capacities. Lawrence alleged that the BLE's denial of his bar application violated his First and Fourteenth Amendment rights. He sought declaratory and injunctive relief requiring defendants to issue him a license to practice law. Second, and in the alternative, Lawrence sought prospective relief to prohibit defendants from using his protected First

Amendment activities as the basis for denying his future applications for a Michigan law license. Finally, the third count sought damages from Baum, Musbach, and Mithani for their alleged retaliation against Lawrence for the exercise of his First and Fourteenth Amendment rights.

Lawrence also filed a motion for a temporary restraining order and preliminary injunction requesting the same relief sought in the first two counts of the complaint.

Defendants filed motions to dismiss. In an opinion dated December 14, 2006, the district court granted those motions and denied Lawrence's motions for preliminary injunctive relief. J.A.63. The district court held that Lawrence's attack upon the BLE decision denying his bar application was squarely barred by the Rooker-Feldman doctrine. Alternatively, the court held that Lawrence's challenge to the constitutionality of the bar admission process had been rejected by this court in Lawrence's prior appeal.

As to Lawrence's second claim, the district court held that a "decision granting prospective relief would necessarily imply that the hearing panel's decision was improper and forbidden by the constitution" and thus was equally barred by Feldman. J.A. 67-68. Further, the court held that, due to the discretion involved in such future decisions, an injunction could not be "meaningfully crafted or enforced." J.A. 68. Third, because Lawrence had not yet filed another application for admission, the district court held that the matter was speculative and not ripe for review. Id.

Finally, the district court held that Lawrence's claims for damages against the individual District Committee members were barred because those defendants were entitled to absolute quasi-judicial immunity or, alternatively, qualified immunity. Id.

Lawrence timely appealed.

II. ANALYSIS

A. The Rooker-Feldman Doctrine: Counts I and II

This court reviews de novo the district court's ruling that the Rooker-Feldman doctrine precluded subject matter jurisdiction. McCormick v. Braverman, 451 F.3d 382, 389 (6th Cir. 2006)(citation omitted), cert. denied, 128 S. Ct. 41 (2007).

The Rooker-Feldman doctrine is based on two United States Supreme Court decisions interpreting 28 U.S.C. § 1257(a). See District of Columbia Court of Appeals v. Feldman, 460 U.S.462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Section 1257(a) states that a final judgment of the highest court of a state may be reviewed by the United States Supreme Court by writ of certiorari. The Rooker-Feldman doctrine is based on the negative inference that, if appellate court review of such state judgments is vested in the Supreme Court, then it follows that such review may not be had in the lower federal courts. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S.280, 283-84 (2005).

In Exxon, the Supreme Court recently summarized the Rooker-Feldman doctrine:

> The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Id. at 284.

In the wake of Exxon, this circuit has "distinguished between plaintiffs who bring an impermissible attack on a state court judgment – situations in which Rooker-Feldman applies – and plaintiffs who assert independent claims before the district court – situations in which Rooker-Feldman does not apply." Pittman v. Cuyahoga County Dep't of Children and Family Serv., 241Fed. Appx. 285, 287 (6th Cir. 2007) (citing McCormick v. Braverman, 451 F.3d 382, 393 (6th Cir.2006)).

In McCormick, we explained that the pertinent inquiry after Exxon is whether the "source of the injury" upon which plaintiff bases his federal claim is the state court judgment:

The inquiry then is the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the Rooker-Feldman doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim.

. . .

To the extent that Defendants argue that these claims, even though they do not assert injury from the state court judgments, are "inextricably intertwined" with those judgments so as to fall within the reach of Rooker-Feldman, that argument must fail. We first note that it was this exact language that was the source of the pre-Exxon Mobil woes as to the application of Rooker-Feldman. In addition, the Supreme Court used the phrase "inextricably intertwined" in Feldman to describe a claim where the plaintiff asserted an injury from the state court judgment itself . . . .In Exxon, the Supreme Court implicitly repudiated the circuits' post-Feldman use of the phrase "inextricably intertwined" to extend Rooker-Feldman to situations[where] the source of the injury was not the state court judgment. In short, the phrase "inextricably intertwined" only describes the conclusion

> that a claim asserts an injury whose source is the state court judgment, a claim that is thus barred by Rooker-Feldman.

McCormick, 451 F.3d at 394-95 (emphasis added).

Applying this distinction, we concluded in McCormick that plaintiff's claims that certain defendants committed fraud and misrepresentation in the course of state probate proceedings did not allege an injury caused by the state court judgment and thus were not barred by Rooker-Feldman. Id. at 392. In contrast, however, plaintiff's claim that the probate court's order of receivership violated her constitutional rights because it effected an unlawful seizure was barred because "the count alleges that the state court order itself was illegal and harmed Plaintiff." Id. at 395.

We have applied this "source of the injury" analysis in other recent cases where Rooker-Feldman was raised as a bar to the district court's jurisdiction. See Pittman, 241 Fed. Appx. at 288 (claims of improper conduct by employees of family services agency not barred by Rooker-Feldman because their actions were independent from juvenile court's custody decision; plaintiff did not seek reversal of custody order); Loriz v. Connaughton, 233 Fed. Appx. 469, 474-75 (6th Cir. 2007)(landowners' claims challenging zoning decisions as unconstitutional barred by Rooker-Feldman; district court could not grant requested relief without reviewing decisions of state agency and courts and determining that they were improper); Brown v. First Nationwide Mortgage Co., 206 Fed. Appx.436,

439-40 (6th Cir. 2006) (mortgagor's claims against individuals involved in mortgage foreclosure proceedings not barred; source of injury was defendants' conduct independent from foreclosure decree itself).

1. Count I

It is clear that Lawrence's claim that defendants violated his First and Fourteenth Amendment rights by denying his most recent application for admission to practice law in Michigan is a direct attack on a state court judgment and thus barred by Rooker-Feldman. Lawrence explicitly seeks a declaration that defendants' decision "impermissibly impinges upon protected federal rights and that Plaintiff is entitled to a license to practice law." J.A. 28 (Compl. ¶ 56). As the Supreme Court held in Feldman, the federal courts are without jurisdiction to entertain such a claim. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 487-88 (1983).

Likewise, this circuit has held that similar federal challenges to the denial of bar applications are barred by Rooker-Feldman. See Raymond v. Moyer, 501 F.3d 548, 554 (6th Cir. 2007); Dubuc v. Michigan Bd. of Law Examiners, 342 F.3d 610, 618 (6th Cir. 2003).

2. Count II

Lawrence's second claim – in which he seeks prospective injunctive relief barring defendants from denying his future bar applications on allegedly unlawful First Amendment grounds – presents a more difficult

question. The first issue raised with respect to this claim is the question of ripeness[2].

In Lawrence's first appeal to this court, Lawrence v. Chabot, 182 Fed. Appx. 442 (6th Cir.2006), the court held that Lawrence's First Amendment as-applied challenge was not ripe because he "had not been denied admission to the bar." Id. at 455. "No injury thus had occurred or was' certainly impending.'" Id.

Now, Lawrence has been denied admission to the bar on grounds which, he asserts, run afoul of the First Amendment. Lawrence has indicated a clear intent to reapply and, as the record reflects, has persisted in the same expressive activity that allegedly resulted in the first denial. Defendants, likewise, have clearly indicated that they consider such activity to render Lawrence of unfit character for admission.

It would, thus, seem that: (1) it is likely that Lawrence will again be denied admission if he engages in the same allegedly protected activity, and that he has a "credible fear of enforcement;"(2) the factual record is perhaps developed as sufficiently as it can be for purposes of a pre-enforcement challenge, and it is certainly developed now in a way that it was not at the time of the Lawrence v. Chabot decision; and (3) Lawrence is exposed to hardship in that the alleged violation of his First Amendment rights is causing him to be unable to practice

[2] The concurrence that follows constitutes the majority opinion on this issue of ripeness.

in his chosen profession. See generally Norton v. Ashcroft, 298 F.3d 547, 554 (6th Cir. 2002).

No doubt there are contingencies that may mean that the anticipated harm will not come to pass. Given that the denial of the license to practice law is an ad hoc decision by a body (the BLE) whose composition no doubt changes over time, it could be that a future application will be granted notwithstanding Lawrence's expressive activity.

Nonetheless, weighing these considerations and applying the relaxed standard of ripeness under First Amendment jurisprudence, Lawrence's second claim for relief is ripe for consideration.

Unfortunately for Lawrence, while ripe, this second claim is also barred by Rooker-Feldman. At first blush, this may seem not to be the case given that no future application – and thus no denial– has occurred.

However, examined for its substance rather than its form, Lawrence's second claim for relief is premised on the same alleged injury as his first cause of action, i.e., defendants' denial of his bar application on the basis of his allegedly protected First Amendment activities. Lawrence's complaint makes this explicit: "Therefore, Plaintiff relies upon the allegations in this Complaint relating to how Plaintiff's bar application was processed, to support this Count for prospective relief." J.A. 29 (Compl. ¶ 58).

In other words, the district court could not have concluded that Lawrence was entitled to the prospective relief he seeks – that is, an order enjoining defendants from doing what they did before– without first finding that defendant's previous decision was unconstitutional. Put another way, while the redress Lawrence seeks in his second cause of action is forward-looking, the claim is nonetheless premised on the same past injury: the allegedly unlawful reasoning used to deny him bar admission in 2006.

In Loriz v. Connaughton, 233 Fed. Appx. 469 (6th Cir. 2007), cert. denied, 128 S. Ct. 1241(2008), we affirmed the district court's ruling that the plaintiffs' claims for damages as well as declaratory and prospective injunctive relief were barred by Rooker-Feldman. The plaintiffs there owned a farm in Ohio, and the owners of an adjacent lot applied for a zoning variance in order to operate a commercial bird hunting operation, including a shooting range. Id. at 470. After that application was approved by the Ohio Department of Natural Resources Division of Wildlife and, ultimately, the Butler County Board of Zoning Appeals, the plaintiffs appealed to the Butler County Court of Common Pleas. That court remanded the matter for further hearings and findings after which the zoning board and Court of Common Pleas again approved the conditional use permit for operation of the shooting range. Id. at 471.

After an unsuccessful appeal to the Ohio Court of Appeals, the plaintiffs filed suit in federal court against various state officials and others alleging, among other

things, that the approval and operation of the shooting range constituted a taking of their property in violation of the Fifth Amendment. The district court dismissed the action, in part, due to lack of jurisdiction based on Rooker-Feldman, finding that the action essentially sought federal district court review over the decisions of the Ohio courts upholding the zoning permits. Id. at 474.

On appeal, this court affirmed, not only as to plaintiffs' claim for damages, but also as to their request for a permanent injunction barring the zoning officials from permitting such shooting range operations in the future:

> Clearly, all of the Lorizes' claims were inextricably intertwined with the state court decisions. In order for the district court to grant the requested declaratory or injunctive relief, or to award damages, the district court would be forced to review the decisions of the Ohio Division of Wildlife, the BZA, the Ohio Court of Common Pleas, and the Ohio appellate court. Moreover, the relief the Lorizes seek – a declaration that the state courts reached an improper result based on a faulty application of the law – is not a general challenge to the constitutionality of the state law, but rather a specific grievance over specific decisions. These claims are exactly the type the Rooker-Feldman doctrine intended to bar in the lower federal courts.

Id. at 475 (emphasis added).

Other circuits have applied similar reasoning to conclude that claims seeking injunctive relief are barred by Rooker-Feldman if they necessarily require the federal court to determine that a state court judgment was erroneously entered. See Mann v. Boatright, 477 F.3d 1140, 1147 (10th Cir.2007) (holding that plaintiffs' prayer for permanent enjoinment of allegedly unconstitutional probate order barred by Rooker-Feldman), cert. denied, 128 S. Ct. 897 (2008); Mickens v. Tenth Judicial Circuit, 181 Fed. Appx. 865, 874-75 (11th Cir.) (noting that "the Rooker-Feldman doctrine can bar injunctive relief as well as other forms of relief" and holding that district court lacked jurisdiction over plaintiffs' request for preliminary injunction to enjoin mortgage foreclosure sale of their property), cert. denied, 127 S. Ct. 834 (2006).

Finally, we note that Lawrence's second cause of action is not outside the scope of Rooker-Feldman by virtue of being a "general challenge" to the constitutionality of a state law or rule. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 483-86 (1983). Instead, Lawrence's second claim challenges only defendants' application of their admission criteria to him. J.A. 29-30 (Compl. ¶ 61). For this reason, Lawrence's claim is distinguishable from the general challenges to the constitutionality of state court rules in Dubuc v. Michigan Bd. of Law Examiners,342 F.3d 610 (6th Cir. 2003), and Fieger v. Ferry, 471 F.3d 637 (6th Cir. 2006).

Thus, because the prospective relief sought by Lawrence can be predicted only on a determination that the prior decision denying him bar admission was improper, his second claim is likewise barred by the Rooker-Feldman doctrine.

B. Count III

In Count III of his complaint, Lawrence seeks damages from individual defendants Baum, Musbach, and Mithani for their alleged retaliation against him by issuing an unfavorable character and fitness recommendation based on his expressed views of the Michigan court system. The district court dismissed this claim for failure to state a cause of action pursuant to Fed. R. Civ. P.12(b)(6).

We review de novo the district court's dismissal for failure to state a claim under Rule12(b)(6). In re Ferro Corp. Derivative Litig., 511 F.3d 611, 617 (6th Cir. 2008) (citation omitted).

We conclude that the district court properly found that these three defendants, as members of the State Bar of Michigan's Character and Fitness Committee – and thus agents of the Board of Law Examiners and the Michigan Supreme Court – are entitled to absolute immunity for their actions in investigating Lawrence's character and fitness to practice law and in making recommendations about the same. See Thomas v. Michigan State Bd. of Law Examiners, No. 94-1346, 1994

WL 659148, at *2 (6th Cir. Nov. 22, 1994) (individual members of Michigan BLE entitled to absolute judicial immunity from civil rights action for damages arising out of denial of plaintiff's admission to state bar); Mayfield v. Francks, No. 92-1012, 1992 WL 73151, at *1 (6thCir. April 10, 1992) (individuals who conducted character and fitness investigation as part of plaintiff's application to practice law in Michigan are absolutely immune from claim for monetary damages); Sparks v. Character and Fitness Comm. of Ky., 859 F.2d 428, 434 (6th Cir. 1988) (actions taken by members of Kentucky Committee on Character and Fitness in making unfavorable recommendation about plaintiff's fitness to practice law are quasi-judicial, entitling defendants to absolute immunity); Otrompke v. Chairman of the Comm. on Character and Fitness for the First Judicial Dist. of Illinois, No. 03 C 7198, 2005 WL 3050618, at *2 (N.D. Ill. Nov. 7, 2005)(dismissing plaintiff's claim against members of character and fitness committee of Illinois bar alleging violation of procedural due process resulting in their unfavorable recommendation as to his bar application because defendants are entitled to quasi-judicial absolute immunity); Julien v. Comm. of Bar Examiners for the Practice of Law, 923 F. Supp. 707, 714-15 (D.V.I. 1996) (similar).

The reasoning of the above cases makes clear that, in conducting the character and fitness examination which is integral to the process of determining whether an applicant is fit to practice law, these individual defendants, acting under the authority of the Michigan Supreme Court, were performing a judicial or quasi-

judicial function for which they are entitled to absolute immunity. See Sparks, 859 F.2d at 433-34.

For this reason, our dicta in Dubuc v. Michigan Bd. of Law Examiners, 342 F.3d 610, 619n. 4 (6th Cir. 2003), that individual members of the Michigan BLE were not entitled to judicial immunity is distinguishable. There, immunity was denied as to defendants' enforcement of allegedly unconstitutional bar admissions rules regarding a waiting period for reapplication. This ruling was premised on the Supreme Court's holding that enforcement of bar rules is not a judicial function. See Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U.S. 719,734-37 (1980). That holding, however, does not alter the conclusion that determining a particular individual's qualifications and fitness for admission to practice law is an inherently judicial act. See Sparks, 859 F.2d at 434.

III. CONCLUSION

For these reasons, we hold that the district court correctly dismissed Lawrence's claims. We AFFIRM.

CONCURRENCE

SUTTON, Circuit Judge, concurring. I wholeheartedly concur in Judge Bertelsman's opinion with respect to his resolution of Lawrence's first and third claims. I write separately to explain my preference for resolving Lawrence's second claim, which seeks to enjoin the Board from denying a second Bar application that Lawrence has yet to file. As to that claim, we ought to affirm the dismissal of the claim on ripeness, not Rooker-Feldman, grounds because (1) it is not "fit[] . . .for judicial decision" and (2) "the hardship to the parties of withholding court consideration" is minimal. Abbott Labs. v. Gardner, 387 U.S. 136, 149 (1967).

Is the claim fit for judicial review? No, for several reasons. At this juncture, we do not know whether Lawrence will file another Bar application. If he does file a second application, we do not know what he will say in completing the application, how he will respond to questioning in the character and fitness hearing and whether the Board will grant or deny him admission. And if the Board opts to deny the second application, we do not know why it will do so. See Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 163 (1967). In the absence of concrete facts regarding the Board's affirmative or negative assessment of Lawrence's potential application, any resolution of Lawrence's claim—indeed even the assumption that Lawrence will be injured—is necessarily premature. See

Nat'l Park Hospitality Ass'n v. Dep't of Interior, 538 U.S. 803, 807 (2003).

Nor has Lawrence shown that he will suffer hardship if he must wait until he files, and the Board rejects, a second application before he seeks to vindicate his First Amendment rights. In the interim, the State has not put his feet to the fire—forcing him to take immediate action or else face the risk of civil or criminal penalties. See Abbott Labs., 387 U.S. at 153 (finding hardship "where a regulation requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious [criminal and civil] penalties attached to non-compliance"); compare id., with Toilet Goods, 387 U.S. at 164–65. The only hardship he identifies is the likelihood that, if the Board denies his second application, he will be forced to litigate his claim initially in the Michigan state courts, which, he says, "fail[] adequately to protect individuals' constitutional rights." Compl. ¶ 24.That, however, is not the type of immediate hardship that makes a claim justiciable, and indeed he cites no case law saying that it is. Even if he must file a second claim in the state courts, that does not mean he must end his challenge there, as the United States Supreme Court has certiorari jurisdiction over federal questions resolved by the state courts. See 28 U.S.C. § 1257(a). In the end, while "[t]he ripeness doctrine" may "dovetail neatly" with other doctrines (like Rooker-Feldman)that limit lower-federal-court review of state court decisions, that reality by itself gives us no warrant to sidestep the traditional ripeness requirements for bringing a claim in federal court. Reno v. Catholic Soc. Servs., 509 U.S. 43, 60 (1993).

The ripeness doctrine, it is true, "is somewhat relaxed in the First Amendment context, "Norton v. Ashcroft, 298 F.3d 547, 554 (6th Cir. 2002), but even that does not help Lawrence. To prevail, Lawrence must show not only that the Board will deny him admission to the Bar but also that it will do so based on speech protected by the First Amendment. Because we do not know what action the Board will take on a potential second application—much less the reasons it will give for that action—we have no basis for applying a relaxed ripeness standard here. See id. at 554–55(holding that, even under the "somewhat relaxed" ripeness standard of the First Amendment, a claim is not ripe for review where the plaintiffs could not show a credible fear of enforcement, where the factual record was insufficient to permit review and where withholding judicial relief would not cause undue hardship); see also, e.g., Marchi v. Bd. of Coop. Educ. Servs., 173 F.3d 469, 478–79(2d Cir. 1999) (holding that, even under the relaxed ripeness standard of the First Amendment, claims were not ripe for review where the claims were "all highly fact-specific and, as of yet, hypothetical" and where the plaintiff could not establish a credible fear of enforcement); Pearson v. Leavitt, 189 F. App'x 161, 163 (4th Cir. June 23, 2006) (holding that, even under the "relaxed" ripeness standard of the First Amendment, "[i]f certain critical facts that would substantially assist the court in making its determination are contingent or unknown, the case is not ripe for judicial review").

APPENDIX C

Case No. 5:06-CV-134

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

FRANK J. LAWRENCE, JR.,
Plaintiff,

v.

JOHN T. BERRY, ET AL.,
Defendants.

OPINION

Judge Richard Alan Enslen. This matter is before the Court on Plaintiff Frank J. Lawrence, Jr.'s Motion for Temporary Restraining Order and Preliminary Injunction as well as three separate Motions to Dismiss filed by counsel for Defendants John T. Berry, Louis A. Smith, David H. Baum, Randy A. Musbach and Sonal Hope Mitahani. Oral argument is unnecessary in light of the briefing. See W.D. Mich. L. Civ.R. 7.2(d).

FACTUAL BACKGROUND

This is not Plaintiff's first experience with the courts of law. Plaintiff passed the Michigan Bar Examination in 2001, but subsequently withdrew his application while a state misdemeanor prosecution was pending against him. At the same time, he filed a federal

lawsuit seeking injunctive and declaratory relief against the State Bar of Michigan ("SBR") and the Michigan Board of Law Examiners ("BLE")--the state administrative agencies responsible for the admission process--as well as other individual defendants with responsibilities for the admission process. Plaintiff's claims in that suit were denied by this Court (Judge David W. McKeague) and the denial was affirmed on appeal. Lawrence v. Chabot, 182 Fed Appx. 442 (6th Cir. May 16, 2006).

Plaintiff's present suit was filed with the Court on September 8, 2006. (Compl. 1.) The timing was due to official action of the BLE on June 14, 2006. It then denied Plaintiff's request for admission, following hearing, based on its conclusion that Plaintiff had not shown by clear and convincing evidence that he had the requisite "good moral character" required by statute and rule for immediate admission. (Compl., Ex. A (Op.) at 19-20.) Such denial did allow re-application after only one year and preserved Plaintiff's passing bar examination scores for the re-application period.(Id.)

Plaintiff's present suit is directed against the following Defendants: John T. Berry (the Executive Director of SBM), Louis A. Smith (President of BLE), and three district committee members who recommended denial of the application–David H. Baum, Randy A. Musbach, and Sonal Hope Mitahani. In Count I of the present Complaint, Plaintiff seeks declaratory relief against Smith. (Compl. ¶ 56.) In Count II, Plaintiff seeks injunctive relief against Berry and Smith. (Id. at¶¶ 57-

62.) In Count III, Plaintiff seeks damages against the three district panel members who had recommended against his application, pursuant to 42 U.S.C. § 1983. (Id. at ¶¶ 63-70.) The basis for the damages is his allegation that the district committee members recommended the denied of the application because of conduct protected under the First and Fourteenth Amendments to the United States Constitution–his political beliefs about the deficiencies of the state courts and his preference of a federal forum over a state forum. (Id.)

STANDARDS OF REVIEW

Defendants' Motions seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) and12(b)(6). The latter rule provision relates to a failure to state a claim. The former rule provision relates to an absence of subject matter jurisdiction. While the subjects are different, the legal standards are somewhat similar.

Under Rule 12(b)(6), a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The allegations of the complaint must be construed in the favor of the plaintiff. Scheuer v. Rhodes, 416U.S. 232, 236 (1974). The rules generally require only a "short and plain statement of the claim" and not detailed allegations. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993). Nevertheless, the complaint "must contain either direct or

inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.'" Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988)(quotations omitted.) The Court "need not accept as true legal conclusions or unwarranted factual inferences." Morgan v. Church's Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987).

For a "facial attack" arguing an absence of subject matter jurisdiction under Rule 12(b)(1),the pertinent standards for review are those identified in RMI Titanium Co. v. Westinghouse Elec. Corp., 78 F.3d 1125, 1134-35 (6th Cir. 1996). Namely, the district court must assume that the plaintiff's allegations are true and must construe them in a light most favorable to the plaintiff. Id. Relief is appropriate only if, after such construction, it is apparent to the district court that there is an absence of subject matter jurisdiction. Id. See also United States v. Ritchie, 15 F.3d 592, 598(6th Cir. 1994) (citing Scheuer v. Rhodes, 416 U.S. 232, 235-37 (1974)).

LEGAL ANALYSIS

1. Count One Claims

Plaintiff's Count One claims against Defendant Smith seek a declaration that "the BLE's decision impermissibly impinges upon protected federal rights and that Plaintiff is entitled to a license to practice law." (Compl. ¶ 56.) The "decision" referenced is the June 14, 2006 BLE denial.(Id. at 1, introductory paragraph.) Under state law, appeal of the BLE decision is by writ of

mandamus to the Michigan Supreme Court. See MCR 7.304. In this case, Plaintiff did not seek a writ of mandamus from the Michigan Supreme Court. His theory is that he has "reserved" his constitutional challenges, which he asserts in this suit. (See Compl. ¶ 55.)

Plaintiff's Count One claims are worded as an attack upon the BLE decision. Such an attack runs squarely into the Rooker-Feldman rule. The Sixth Circuit explained the rule recently in Dubuc v. Michigan Bd. of Law Examiners, as follows:

> "The Rooker-Feldman doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction overstate-court judgments." Verizon Maryland, 535 U.S. at 644 n. 3 . . . .
>
> In District of Columbia Court of Appeals v. Feldman, the two plaintiffs were denied permission to sit for the District of Columbia bar exam because one had not graduated from law school and the other had not graduated from an accredited law school. . . . . Each plaintiff unsuccessfully appealed the bar admission committee's decision to the District of Columbia Court of Appeals. Instead of then seeking review from the Supreme Court, each plaintiff filed a lawsuit in the United States District Court for the District of Columbia, seeking a declaration

> that the District of Columbia Court of Appeals' decision was unconstitutional and an injunction allowing him to sit for the bar exam. . . .
>
> The Supreme Court determined that a district court has no jurisdiction to hear a challenge to a state court's final decision in a bar admission matter. Id. at 482 . . . The Court concluded that plaintiffs "should have sought review of the District of Columbia Court of Appeals' judgments in this Court." Id. The Court, however, determined that a district court does have jurisdiction to hear "a general challenge to the constitutionality" of a bar admission rule. Id. at 483 . . . . Therefore, a district court cannot reverse a state court's final decision to deny " a particular application for admission," but a district court may resolve a general challenge to the future enforcement of an allegedly unconstitutional bar admission rule. Id. at 484-85 . . . . (quoting Doe v. Pringle, 550 F.2d 596, 599 (10th Cir.1976)).

Dubuc, 342 F.3d 610, 617-18 (6th Cir. 2003) (some citations deleted).

Plaintiff Lawrence's Count One claims are worded as an as-applied challenge relating to the binding decision of the state administrative agency. The process in question required that any legal challenges pertaining to

the admission decision would be raised therein. Those which were not raised are deemed waived. The Feldman doctrine, therefore, precludes federal subject matter jurisdiction as to Count One.

Furthermore, even assuming a basis for federal subject matter jurisdiction as to facial challenges to state procedures, the claims asserted in Count One which challenge the constitutionality of the Michigan statutory and administrative character fitness adjudication process fail to state a claim for the reasons given by the Sixth Circuit Court of Appeals' in its prior decision. See Lawrence, 182 Fed. Appx. at 453-55.

2. Count Two Claims

Plaintiff's Count II claims are explained in the Complaint as follows: "In the event that this Court rules that Plaintiff is not entitled to relief in Count I, then, in the alternative, Plaintiff abandons any claims for retrospective relief and he seeks only prospective relief pertaining to his re-application process." (Compl. ¶ 57.) Plaintiff requests in his Complaint that the Court enjoin Defendants Smith and Berry from using his "'First Amendment activities . . . as a basis for denying his [further]application.'" (Id. at ¶ 59, quoting Dubuc, 342 F.3d at 613.)

These claims too fail. Although Plaintiff is only seeking prospective relief, his Complaint is framed in terms of the particular conduct and adjudication of the hearing panel and the district committee members. A

decision granting prospective relief would necessarily imply that the hearing panel's decision was improper and forbidden by the constitution. Furthermore, this case is distinct from the Dubuc case. In Dubuc, the prospective constitutional violation concerned an administrative rule which was likely to be applied in future application proceedings. In this case, Count Two does not concern any such rule. In short, there is no persuasive reason for distinguishing this case from Feldman because the object of any prospective relief would not relate to changes in hearing procedures, but rather exercises of administrative discretion and fact-finding. These are not circumstances concerning which an injunction could be meaningfully crafted or enforced.

Furthermore, since such future application is not yet pending and its future consideration is a speculative matter, the Court determines that Plaintiff's Count Two claims for prospective relief are not ripe for review. See City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); Norton v. Ashcroft, 298 F.3d 547, 554 (6th Cir. 2002). See also Grendell v. Ohio Supreme Court, 252 F.3d828, 835 (6th Cir. 2001).

Therefore, the Court determines that Count Two should be dismissed due to lack of subject matter jurisdiction and failure to state a claim.

3. Count Three Claims

Count Three of the Complaint is a request for damages against three district hearing committee

members who initially recommended that Plaintiff's application be denied, which recommendation was accepted by the BLE. (See Compl., Ex. A at 1, 20-21.) These claims should be dismissed because the district hearing panel members are protected by absolute quasi-judicial immunity. Sparks v. Character & Fitness Comm. of Ky., 859 F.2d 428, 434 (6th Cir. 1988).

While Plaintiff has argued that Defendants acted in "bad faith," he has failed to cite any factual circumstances from which one could conclude that the judicial acts in question were the product of an improper bias or motive, as opposed to an act of mistaken judicial fact-finding. Also, even if absolute immunity did not apply to district committee members, then dismissal of the claims would be proper due to qualified immunity, since a reasonable officer would not have understood his or her conduct to have been illegal at the time. See Anderson v. Creighton, 483 U.S. 635, 640(1987); Rippy ex rel. Rippy v. Hattaway, 270 F.3d 416, 424 (6th Cir. 2001).

Therefore, such claims will be dismissed due to failure to state a cause of action[3].

CONCLUSION

Therefore, Defendants' Motions shall be granted and this suit dismissed. In saying so, the Court does not wish to discourage Plaintiff from reapplying for admission. The Court's general sense is that of BLE panel member

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[3] Since Plaintiff cannot succeed on the merits of any claim, he is also not entitled to any injunctive relief.

William E. Rheaume--that Plaintiff is likely to be an excellent attorney once admitted to the bar.

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
Senior United States
District Judge

Dated in Kalamazoo, MI:
December 14, 2006

APPENDIX D

Case No. 5:06-CV-134

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

FRANK J. LAWRENCE, JR.,
Plaintiff,

v.

JANET K. WELCH, ET AL.,
Defendants.

JUDGMENT

In accordance with the Opinion of this date;

IT IS HEREBY ORDERED that Defendants John T. Berry, Louis A. Smith, David H.Baum, Randy A. Musbach and Sonal Hope Mitahani's Motions to Dismiss (Dkt. Nos. 25, 34, & 36) are GRANTED and all claims against them are DISMISSED.

IT IS FURTHER ORDERED that Plaintiff Frank J. Lawrence, Jr.'s Motion for Temporary Restraining Order and Preliminary Injunction (Dkt. No. 2) is DENIED.

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
Senior United States
District Judge

Dated in Kalamazoo, MI:
December 14, 2006

APPENDIX E

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D.C. 20543-0001

May 11, 2009

Clerk, United States Court of Appeals
For the Sixth Circuit
524 Potter Stewart U.S. Courthouse
Cincinnati, OH 45202

Re: Frank J. Lawrence, Jr. v
Janet K. Welch, et. al.
Application No. 08A993
(Your 07-1026)

Dear Clerk:

The application for extension of time within which to file a petition for writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on May 11, 2009 extended the time to and including July 9, 2009.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Sutter, Clerk
By: Gail Johnson, Case Analyst